PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ADMIRALTY.

Jurisdiction

The United States Circuit Court of Appeals of the Second Circuit decides in *The Pennsylvania*, 154 Fed. 9, that contracts of a mixed nature are not cognizable in the admiralty courts, and, where the principal subject-matter of a controversy belongs to the jurisdiction of a court of common law or of equity, the incidental matters must also be relegated to the appropriate jurisdiction, although of themselves they might be cognizable in admiralty. See in this connection notes to the *Richard Winslow*, 18 C. C. A. 347 and to the *Board of Commissioners* v. *Howard*, 27 C. C. A. 530.

BILLS AND NOTES.

Bona Fide Purchaser

In *First Nat. Bank of Durand* v. *Shaw et al.* 112 N. W. 904, the Supreme Court of Michigan decides that where a joint and several note purporting to have been signed by several persons, came before maturity, into the hands of a bona fide holder, the fact that some of the signatures are forged does not affect the liability of the signers whose signatures are genuine. See however *Seely* v. *People*, 27 Ill. 173. The principal decision contains a good review of the authorities in point.

CARRIERS.

Checking Baggage

The Supreme Court of Michigan holds in *Wolf* v. *Grand Rapids,, H. & C. Ry. et al.*, 112 N. W. 732 that where transfer agent with authority to check the baggage of one who subsequently purchased a ticket, the fact that the agent violated his instructions not to check baggage for a person unless he produced a ticket was immaterial on the issue of the

CARRIERS (Continued).

liability of the carrier for loss of the baggage. A very different case the court says would have been presented had not the plaintiff purchased the ticket.

COMMERCE.

In *Stubbs* v. *People*, 90 Pac. 1114, the Supreme Court of Colorado decides that an act prohibiting the docking of horses and the importation and use of them, in so far as it prohibits the importing from other States of docked tailed horses, or the using of them while they are still owned by the person who brought them into the State, violates the Federal Constitution, giving Congress the right to regulate commerce between the States. Compare *Scott* v. *Donald*, 165 U. S. 58.

Restraint on Interstate Shipments

CONFESSIONS.

In *State* v. *Sherman*, 90 Pac. 981, the Supreme Court of Montana decides that confessions to be inadmissible need not have been procured by inducements held out by one in authority, but it is enough that inducements were held out by a private person in the presence of one in authority.

Admissibility: Inducements

CONSTITUTIONAL LAW.

An important ruling of the Supreme Court of South Carolina appears in *Buist* v. *City Council of Charleston*, 57 S. E. 862 where it is held that whether an act is obnoxious to that provision of the state Constitution prohibiting the passing of a special law where a general law can be made to apply is a legislative question. See in this connection *Guthrie Nat'l. Bank* v. *City of Guthrie*, 173 U. S. 528.

Judicial or Legislative Question

In *Ex parte Drayton et al.*, 153 Fed. 986, the United States District Court, (D. S. C.) decides that a statutory provision that any laborer working for a share of a crop, of for wages in money or other valuable consideration, under a contract to labor

Slavery

CONSTITUTIONAL LAW (Continued).

on farm land, who shall receive advances either in money or supplies, and thereafter wilfully and without just cause fail to perform the reasonable services required of him by the terms of the contract, shall be liable to prosecution for misdemeanor and punished by imprisonment, etc., constituted an attempt to secure compulsory service in payment of a debt, which was not within the state's police power to create and punish offenses. Such act, it is held, violates the thirteenth amendment of the Federal Constitution. Compare *Gulf etc. Ry.* v. *Ellis*, 165 U. S. 157.

Payment of Laborers

In *Jordan* v. *State*, 103 S. W. 633 the Court of Criminal Appeals of Texas holds that a State statute making it unlawful for any person, firm, association of persons, corporation, or agent of either, to issue any ticket, check, or writing obligatory to any servant or employe for labor performed, redeemable or payable in goods or merchandise, and providing punishment for violation of the act, interferes with the right of contract, and contravenes a provision of the State constitution that no citizen shall be deprived of life, liberty, property, privileges, or immunities, etc., except by due course of law, and also the Federal Constitution. Compare *State* v. *Haun*, 61 Kan. 146, 47 L. R. A. 369.

Limiting Hours of Employment

An interesting decision of the Court of Appeals of New York appears in *People* v. *Williams*, 81 N. E. 778, where it is held that a statute prohibiting the employment of females regardless of age, in factories between nine o'clock P.M. and six o'clock A.M., is not a valid exercise of police power, but is an infringement on the constitutional liberty to contract. The case is worthy of particular attention in view of the general tendency hitherto to allow similar legislation in the case of women and children. Compare *Lochner* v. *New York*, 198 U. S. 45.

CONTRACTS.

Restraint of Trade

In *John D. Park & Sons Co.* v. *Hartman*, 153 Fed. 24, the U. S. Circuit Court of Appeals of the Sixth Circuit decides that the owner of a secret process or formula is not protected by law in his secret, but he may protect himself by contract against its disclosure by one to whom it is communicated in confidence, or restrict its use by such person, and such contracts are not in restraint of trade because of the character of the property right in the secret which would be destroyed by its disclosure, and because it is not in itself an article of commerce, but such considerations do not apply to contracts for the sale of the manufactured product which do not involve a disclosure of the secret, and such contracts are within the rules against restraint of trade. This case presents a most interesting and satisfactory discussion of the principles involved and is well worthy of careful study.

Consideration: Previous Liability

The Court of Appeals of Maryland holds in *Linz* v. *Schuck*, 67 Atl. 286, that where a person contracts to construct a cellar for a price based upon a supposed condition of the soil, but afterwards, upon the occurrence of substantial and unforseen difficulties in its construction which would cast upon him an additional burden not contemplated by the contract, refuses to carry it out, his promise to complete the work is a sufficient consideration for the promise of the owner to pay him an additional compensation. Compare *King* v. *Duluth etc. Ry.*, 61 Minn. 487.

Legality of Consideration

The Supreme Court of Michigan holds in *Rhoades* v. *Malta Vita Pure Food Co.*, 112 N. W. 940, that where a company made a secret agreement with an employe of a rival company whereby he was to abandon his contract of employment, the object being to embarrass the rival company as a competitor, the transaction was illegal and fraudulent, and did not furnish a good consideration for a promise to pay the

CONTRACTS (Continued).

employe a salary. See in this connection *Comstock* v. *Draper*, 1 Mich. 481.

CORPORATIONS.

Purchase of Corporate Stock

The Supreme Court of Alabama decides in *Dacovich et al.* v. *Canizas et al.*, 44 S. 473, that a director of a corporation may purchase for himself stock of the corporation, notwithstanding his agreement with the other directors to purchase stock with corporate funds for the benefit of the corporation, since such agreement is void.

Liability of Transferee

The Supreme Court of Oregon decides in *Williams et al* v. *Commercial Nat. Bank of Portland et al.*, 90 Pac. 1012 that where a stockholder receives the assets of a corporation upon its liquidation, leaving it without funds to pay its creditors, he can be required to refund the full amount in a suit by a creditor to follow the assets of the corporation. Compare *National Bank* v. *Texas Investment Company*, 74 Tex. 437.

DEATH.

Right of Action

In *Keep* v. *National Tube Co.*, 154 Fed. 121, the United States Circuit Court, (D. N. J.) decides that the rule established by the weight of authority is that, if a statute of the forum creates a right of action for damages resulting from death caused by wrongful act, neglect, or default, a foreign statute creating such right will be enforced, if the two statutes be not so dissimilar as to establish substantially different policies. Substantial similarity between the statutes is all that is required, and mere dissimilarities as to the persons in whose names actions may be brought, or in the amounts recoverable, will not defeat jurisdiction. Compare *Usher* v. *Railroad Company*, 126 Pa. 206, 4 L. R. A. 261.

DIVORCE.

An important decision of the Court of Chancery of New Jersey appears in *Kretz* v. *Kretz*. 67 Atl. 378, where it is held that a husband is not entitled to divorce on the ground of adultery, where the wife at the time of the commission thereof was insane. With this case compare *Matchin* v. *Matchin*, 6 Pa. 332, where a contrary result is reached.

Defense of Insanity

In *Campbell* v. *Campbell*, 112 N. W. 481, the Supreme Court of Michigan decides that it is extreme cruelty, warranting a divorce, for a wife to refuse to cohabit with her husband for three years. See in this connection *Whitaker* v. *Whitaker*, 111 Mich. 202, 69 N. W. 1159.

Cruelty

EQUITY.

The Court of Errors and Appeals of New Jersey holds in *Vulcan Detinning Co.* v. *American Can Co. et al.*, 67 Atl. 339, that the maxim, "One who comes into equity must come with clean hands," is based upon conscience and good faith, and the bad faith or the unconscionable conduct that will justify the application of this maxim must be based upon actual knowledge or wilful fraud. The fraud of an agent that is by mere imputation chargeable upon a complainant will not render the hands of the latter unclean within the meaning of this maxim. See in connection herewith *American Association* v. *Innis*, 109 Ky. 595.

"Clean Hands"

EVIDENCE.

In *United States* v. *Chisholm*, 153 Fed. 808, the United States Circuit Court, (S. D. Ala.), decides that the opinion alone of a nonexpert upon a question of insanity is not evidence unless accompanied with a statement of the facts and circumstances within the personal knowledge of the witness upon which that opinion is based.

Insanity: Nonexperts

EVIDENCE.

Requiring Production of Documents

In *American Banana Co.* v. *United Fruit Co.*, 153 Fed. 943, the United States Circuit Court, S. D. N. Y., decides that an action to recover treble damages under the Sherman Anti-trust Act is penal in character, but such fact does not preclude the court from requiring the defendant, when a corporation, to produce books or writings under Rev. St. § 724 [U. S. Comp. St. 1901, p. 583]. See in this connection *Hale* v. *Henkel*, 201 U. S. 43, 26 S. C. R. 370.

HOMESTEAD.

Abandonment

Against the dissent of one Judge the Supreme Court of Nebraska decides in *Weatherington* v. *Smith et al.*, 112 N. W. 566, that neither the husband nor the wife can abandon the family homestead, and thereafter sell and convey the same to another, to the exclusion of the homestead right of an insane spouse. Compare *McKnight* v. *Dudley*, 148 Fed. 204.

INJUNCTION.

Jurisdiction

Against the dissent of two judges the Supreme Court of Oklahoma decides in *Walck* v. *Murray et al.*, 91 Pac. 238, that a court of equity has no power or jurisdiction to restrain or enjoin the constitutional convention, its officers or delegates, from exercising any of the rights, powers, and obligations confided to it by Congress or the people; nor can the powers of the court be invoked to restrain or enjoin the submission of the Constitution, or any proposition contained therein, to a vote of the people, in advance of its adoption and ratification by the people, and its approval by the President of the United States, on the ground that the Constitution, or any of its provisions, is unconstitutional, or that the convention acted in excess of its lawful powers. Herewith compare *Frantz* v. *Autry*, 91 Pac. 193, and *Board of Commissioners* v. *Constitutional Delegate Convention &c.*, 91 Pac. 239.

INTOXICATING LIQUORS.

The Supreme Court of Illinois decides in *South Shore Country Club* v. *People*. 81 N. E. 805, that the dispensing by a bona fide social club to its members without profit, and as incidental merely to its organization, of intoxicating liquors, is a sale within the statute declaring a punishment for whoever, not having a license to keep a dramshop, sells intoxicating liquors to be drunk on the premises. See in this connection *People* v. *Law and Order Club*, 203 Ill. 127; 62 L. R. A. 884.

Sales: Social Clubs

JUDGMENTS.

In *Baumhoff* v. *St. Louis & K. R. Co. et al.*, 104 S. W. 5, it appeared that plaintiff built a railroad under a contract to receive bonds, money, and stock of the company deposited with a trust company, and sued to recover the money and the value of the stock, and to enforce a lien therefor; the trust company being dismissed as a party. He was adjudged a lien, recovery of the money, and to be entitled to receive $25,000 in paid-up shares of the railroad company's capital stock. No money judgment was rendered for the stock, because it was not shown to possess pecuniary value. Under these facts the Supreme Court of Missouri, Division No. 1, decides that the judgment did not preclude him from suing in equity to compel the trust company to deliver him the certificate of the stock, and to compel the railroad company to transfer the shares upon its books. Compare *Cromwell* v. *Sac County*, 94 U. S. 351.

Res Judicata

LIBEL.

In *Peck* v. *Tribune Co.*, 154 Fed. 330, the United States Circuit Court of Appeals of the Seventh Circuit decides that the publication by a newspaper of an advertisement containing a portrait of a woman, together with a statement calculated to convey the impression that she is a nurse, and had personally used, and as a nurse had recommended the use of, a certain brand of whisky as a tonic, does not

Advertisement Containing Portrait

LIBEL (Continued).

constitute a libel per se, and, in the absence of allegation of special damages, will not support an action. See in this connection *Funk* v. *The Evening Post Publishing Co.*, 27 N. Y. Supp. 1089.

MASTER AND SERVANT.

It is decided by the Supreme Court of Illinois in *Manufacturers' Fuel Co.* v. *White*, 81 N. E. 841, that in an action for personal injuries sustained by a servant in being kicked by a mule possessing a vicious and dangerous propensity to kick, which mule plaintiff was driving by direction of defendant, it was not necessary for the jury to find that those propensities resulted from a desire to injure a human being, since there is no distinction between directing the use of a dangerous mule and directing the use of a dangerous mechanical appliance. One may possibly be permitted to dissent from the reason on which this decision is rested.

Vicious Animals

MUNICIPAL CORPORATIONS.

The Supreme Judicial Court of Mass. decides in *Wheelock et al.* v. *City of Lowell et al.*, 81 N. E. 977, that where the dominant motive for the erection by a city of a building is a strictly public use, the expenditure for its erection is legal, though incidentally the building may be devoted occasionally to uses which are not public; but where the project of the city is merely colorable, and a design exists to devote the building entirely to other than public uses, no public funds can be appropriated for its erection. Compare *Opinion of the Justices*, 182 Mass. 605.

Public Buildings

PARTNERSHIP.

The Supreme Court of Arkansas holds in *French et al.* v. *Vanatta et al.*, 104 S. W. 141, that where a partner, for the purpose of contributing his share of the partnership capital, borrows money of a bank on his note on which the other partners are sureties, and they have to pay the note, his indebted-

Debts of Partner to Copartners

PARTNERSHIP (Continued).

ness is not to the firm, but to the partners, so that they do not have a lien on his interest in the partnership, but have a claim against him personally, equally, only, with his other creditors. See in this connection *Uhler* v. *Semple*, 20 N. J. Equity 288.

RAILROADS.

Elevation of Road: Damages

In *Gillespie* v. *Buffalo, Rochester and Pittsburg Railway Company*, 33 Pa. C. C. R. 513, the Common Pleas Court of Jefferson County decides that a railroad company cannot be compelled to make a second payment of damages for elevating its roadbed on its lawfully acquired right of way for which due compensation was made at the time of acquisition. Compare *Pennsylvania Railroad Company* v. *Lippincott*, 116 Pa. 472.

RECORDS.

Cancellation: Jurisdiction

A very important decision of the Court of Errors and Appeals of New Jersey appears in *Vanderbilt* v. *Mitchell et al.*, 67 Atl. 97. In that case it appeared that a certificate of birth, declared by section 13 of the act of 1888 (P. L. 1888, p. 60) to be entitled to be received in evidence to prove the facts therein contained, was placed of record with the medical superintendent of the bureau of vital statistics. A certificate was made by the physician present at the birth of the child, and, as required by said statute, among other things set forth, as far as the facts could be ascertained by him, the date and place of birth of the child, the name of each of the parents, the maiden name of the mother and the name of the child. In making the certificate the physician was imposed upon by the false statements of the mother as to the paternity of the child, and certified contrary to the fact, that the complainant was the father of the child. Under these facts the Court holds that a Court of Equity has jurisdiction (1) to cancel such false certificate, or so much thereof as relates to, and charges upon the complainant, the paternity of the child; (2) to

RECORDS (Continued).

require the medical superintendent of the bureau of vital statistics to endorse the fact of the cancellation upon the record; (3) to enjoin the use of the original certificate, or copies thereof as evidence; and (4) to enjoin the mother and the child from claiming for said child, by virtue of said certificate, the status of a lawfully begotten child of the complainant. See also in this connection *Vanderbilt* v. *Mitchell*, 67 Atl. 102.

RIGHT OF PRIVACY.

The Court of Chancery of New Jersey holds in *Edison* v. *Edison Polyform Mfg. Co.*, 67 Atl. 392, that an injunction will lie to restrain the unauthorized use of one's name by another as a part of its corporate title, or, in connection with its business or advertisements, his picture and his pretended certificate that a medicinal preparation, which such other is engaged in manufacturing, is compounded according to the formula devised by him, though he is not a business competitor. Compare *Walter* v. *Ashton*, (1902) 2 Ch. 282.

Injunction

STATUTES.

The Supreme Court of Pennsylvania holds in *Haspel* v. *O'Brien*, 218 Pa. 146, that where a statute is repealed and its provisions are at the same time re-enacted by the repealing act, the effect is that the earlier statute is not in fact repealed, but its provisions continue in active operation, so that all the rights and liabilities incurred thereunder are preserved and may be enforced.

Repeal: Re-enactment

STREET RAILROADS.

In a case considering with great thoroughness the principles involved, the Supreme Court of Indiana accepting the general principle that a street railway company, even where part of its business consists of interurban traffic need not pay abutting owners as for an additional servitude holds nevertheless that an owner of property abutting on a

Compensation to Property Owners

STREET RAILROADS (Continued).

street on which interurban cars are operated may prosecute an action for special damages resulting from the improper operation of the cars, notwithstanding a sale of the property pending the action, and notwithstanding an injunction to restrain the wrong complained of is sought, and may recover the damages sustained up to the time of the bringing of the action. In the case it appeared that the mode of operation of the street railway caused the house of an abutting owner sixty feet from the track to shake so as to cause the plastering and ceilings and the pictures on the walls to fall and the railway company is held liable. Two judges dissent: *Kinsey* v. *Union Traction Co.*, 81 N. E. 922. Compare *De Graw* v. *Electric Railway Company*, 60 N. Y. Supp. 163.

TRADE NAMES.

Right to Use One's Own Name

In *Fine Cotton Spinners &c.* v. *Harwood Cash & Co., Lim.*, (1907) Ch. 184, the Chancery Division decides that although, in the absence of fraud or false representation, a man is entitled to carry on business in his own name in competition with a similar business, previously well established under the same name, notwithstanding that confusion and mistake in consequence arise, yet, if he has never carried on such a business on his own account or in partnership with others, he cannot, by promoting and registering a company with a title of which his name forms a part, confer upon that company the rights which he, as an individual possesses in the use of that name. With this decision compare a very recent holding of the Court of Errors and Appeals of New Jersey in *International Silver Co.* v. *Rogers*, 67 Atl. 105.

TRUSTS.

Irrevocable Deed of Trust

In *Nolan* v. *Nolan*, 218 Pa. 135, the Supreme Court of Pennsylvania decides that a person *sui juris* cannot as against creditors, either prior or subsequent, settle his property, by an irrevocable deed, in trust for his own use for life, and over to his appointees

TRUSTS (Continued).

by will, and in default of such appointment, to such persons as would be entitled to take under the intestate laws in such a manner as to enjoy all the benefits of ownership and share none of the burdens. See in this connection *Potter* v. *Fidelity Insurance Co.*, 199 Pa. 360.

WATER AND WATER COURSES.

Percolating Water

The Superior Court of Delaware decides in *Little* v. *American Telephone & Telegraph Co.*, 67 Atl. 169, that a telegraph and telephone company, having acquired a right of way over plaintiff's farm, was liable for the destruction of a natural spring on the land, fed by percolating waters, caused by the telegraph company's negligence in unnecessarily using dynamite with which to blast out a hole for a telephone pole. It is further decided that in such action, the measure of plaintiff's damages was compensation for the injury sustained by the loss of the spring, estimated in connection with the diminished value of plaintiff's farm because of the loss of water which the spring supplied. See in this connection *Hougan* v. *Railroad Co.*, 35 Ia. 558.